

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLANT**





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76 - 7155

B R I E F

IN THE

SECOND CIRCUIT COURT OF APPEALS OF THE UNITED STATES

NO. 76 - 7155

DONALD SCHANBARGER,

Plaintiff - Appellant,

v.

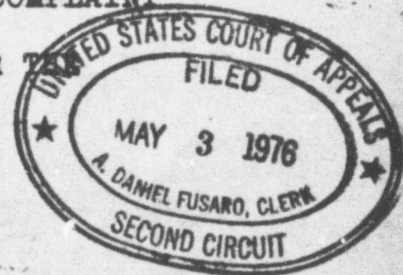
SUPERINTENDENT OF THE NEW YORK STATE POLICE, DISTRICT ATTOR-  
NEY OF ALBANY COUNTY, DIRECTOR OF ALBANY COUNTY PROBATION  
DEPARTMENT, SHERIFF OF ALBANY COUNTY and ALBANY COUNTY JUDGE  
JOHN J. CYNE,

Defendants - Appellees.

APPEALED ORDER OF JUDGMENT OF DISMISSAL OF COMPLAINT

BY THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLANT, SUBMITTED



DONALD SCHANBARGER

Pro Se  
Salem, New York 12865

Telephone Number: None

APRIL 20, 1976

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SUPERINTENDENT OF THE NEW YORK STATE POLICE, DISTRICT ATTOR-  
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DEPARTMENT, SHERIFF OF ALBANY COUNTY and ALBANY COUNTY JUDGE  
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NOTICE OF APPEAL filed March 10, 1976

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Plaintiff complaining of the defendants:

FOR A FIRST CAUSE OF ACTION AGAINST THE SUPERINTENDENT OF  
THE NEW YORK STATE POLICE, DISTRICT ATTORNEY OF ALBANY  
COUNTY, DIRECTOR OF ALBANY COUNTY PROBATION DEPARTMENT  
AND SHERIFF OF ALBANY COUNTY

1. Asserted jurisdiction is Title 42 U.S.C. Section 1983, Title 28 Section 1343 subd. 3. and 4., and the United States Constitution's Article 3. Section 2., personal rights clause of the 10th Amendment and the equal protection, prohibited state conduct and due process clauses of the 14th Amendment, and plaintiff raises the question of

Whether a federal court failing to take judicial notice of the United States Constitution without request, violates the personal rights clause of the 8th, 9th, & 10th Amendments and equal protection, prohibited state conduct and due process clauses of the 5th and 14th Amendments of the federal Constitution, when every member of the United States judiciary have agreed to support it as a condition of their office as such a member?

2. Around midnight of May 9, 1974 the plaintiff against his wish, was arrested by two people dressed as N.Y.S. Troopers when he failed to display a registration for a V. W. Camper he was repairing in ALKEN'S HAIRSTYLISH parking area. As two Troopers took him from said area two other people dressed as troopers arrived and started to search the said camper who on information and belief removed items from said camper of which are still at the physical property of the N.Y.S. Police, all of which was against the wish of the plaintiff.

3. Plaintiff was held at the N.Y.S. Police barracks for

App. 2.

(COMPLAINT)

around two hours and then taken to a magistrate and charged with violation of the N.Y.S. Vehicle & Traffic Law Sec. 1102 (failure to obey an order), Penal Law Sec. 110 (attempt to commit a crime) and Sec. 265.05 subd. 2 (possession of a firearm) which caused plaintiff's incarceration at the Albany County Sheriff's jail for over a week.

4. Members of the said jail and said police both took pictures and finger prints of the plaintiff against his wish.

5. During plaintiff's said stay at said jail the Albany County District Attorney's office entered the prosecution of the plaintiff on said charges.

6. After plaintiff's release from said jail the Albany County District Attorney's office withdrew the Penal Law Sec. 110 charge and reduced Sec. 265.05 subd. 2 to Sec. 400 subd. 8.

7. The Albany County District Attorney's office took plaintiff to trial on July 17, 1974, on the aforesaid charges which resulted in a suspended sentence and one year probation on August 1974.

8. Before sentence plaintiff was sent to the Albany County Probation Dept. by the trial justice. Plaintiff reported as directed, but he refused to answer any questions. On information and belief said Dept. compiled a dossier about the of the plaintiff.

9. August 12, 1974 plaintiff served a Notice of Appeal on the office of the Albany County District Attorney and filed



one with the trial court.

10. About a week after filing the said notice of Appeal plaintiff sent a Show Cause Order for a stay of sentence during appeal, to Judge John Clyne for signature.

11. At Albany County Court plaintiff made motion for a trial record for appeal on September 19, 1974, which was denied as moot since it would be filed.

12. Do to plaintiff's failure to report to the said Probation Dept., said Dept., made motion for probation violation resentencing on October 7, 1974.

13. At said motion plaintiff asked MARK T. CONNORS, a member of said Dept., if he if he ever parked in the Fire Lane on Columbia St. in Albany, and called his attention that plaintiff was not to associate with discreditable person or places. The reply by said member was "no". On information and belief said member, as most or all members of said Dept., had parked at said Fire Lane, and use their position at the said Dept. to avoid paying a parking ticket, obstruct governmental administration (N.Y.S. PENAL LAW Sec. 195.05 and 195.00), this depriving the plaintiff of a challenge to the motion for resentencing on the grounds the trial Court had ordered plaintiff to report to a place of known discreditable people.

14. Do to the said motion plaintiff was resentenced to 90 days at the ALBANY COUNTY SHERIFF'S jail.

15. Plaintiff's first said stay at said jail resulted in being locked in a cell without breakfast and failure to get out

of said jail a letter or phone call until after 24 hours stay. Said jail would supply plaintiff with paper to write with after fuss, and would not supply Notary Public, law books to find out what charges he was charged with and information as to what motions should be timely made, adequate medical care for his painful teeth, and clothing. The second stay of plaintiff at said jail of October 7, 1974, met with similar conditions as first stay.

16. Plaintiff made motion with papers filed before he was at said jail, for a record for appeal under 22 NYCRR Sec. 1302.5 to Albany County Court on October 17, 1974.

17. Plaintiff was released from said jail on October 30, 1974, by order of Judge John Clyne, during appeal, and was told appeal record was filed. Said judge waived court rules for appeal and received plaintiff's submitted brief.

18. On February 19, 1975 plaintiff commenced action against Judge John Clyne for a decision to said appeal. Motion was made to dismiss the case returnable April 14, 1975. Decision to appeal was issued March 17, 1975, to reverse both convictions with accusatory instrument dismissed, about 5 mos. after appeal was submitted. The office of the Albany District Attorney did not seek an appeal of the said decision Order dated April 8, 1975, and time of such appeal has expired.

19. Members of the N.Y.S. Police caused plaintiff's V. W. Camper to be removed from said parking area on May 10, 1974, against the wish of plaintiff, which has resulted in litigation.



tion to recover the same. The greatest problem to recover the same, which is still unrecovered, is that the garage that took it for members of the N.Y.S. Police, is claiming a lien for ineffect keeping it from the plaintiff, for which plaintiff should pay and/or plaintiff has a fiduciary relationship with members of the N. Y. S. Police to expend his funds to limit their liability.

20. On information and belief there is a long standing practice of the Albany District Attorney to prosecute people in the interest of police, but not to prosecute police in the interest of non-police people.

21. On information and belief the ALBANY COUNTY PROBATION DEPARTMENT gathers information about criminal defendants for use of the ALBANY COUNTY DISTRICT ATTORNEY'S OFFICE.

22. On information and belief the actors herein, by omission or commission entered into a concerted scheme and conspired together under the common law of principle in the first degree (PRINCIPLE), second degree (PRESENT) and a common law accessory before the fact (NOT PRESENT BUT COUNSELS OR AIDS BY PRIOR CONDUCT), as illustrated in this cause of action. The said situation of conspiracy of more or less of traditional principles of agency, partnership, joint venture and the like for the purpose of depriving plaintiff herein of the right to be left alone, in violation of their oath of office, part of which being the PERSONAL RIGHTS clause of the 10th AMENDMENT and the EQUAL PROTECTION, PROHIBITED STATE CONDUCT

AND DUE PROCESS clauses of the 14th AMENDMENT of the FEDERAL CONSTITUTION and N.Y.S. Civil Rights Law Sec. 2., 8., 10., and 12., for plaintiff's failure to waive his FEDERAL CONSTITUTIONAL right, power privilege or immunity, his protective conduct, and submit to demand or demands without authority of law thru prohibited conduct. The general mechanics of said conspiracy is a victim is to suffer illegal demand, arrest, search and prosecution that results in conviction which is calculated to exhaust all the victims resources thru assorted ploys to the end that everyone should find it to their financial advantage to waive each and every CONSTITUTIONAL right, than to assurt them thru the DOCTRINE OF WASTE thru habit of the actors herein to engage in conduct of conformity of habit or routine practice to accomplish such results.

23. Plaintiff had once before said conspiracy had troble with police, which had the same threshold issue that police must obey the law, as failed to occur as said herein, and that was April, 1968 with members of the New York State Police for which he has yet to recover cash damages.

24. The State of New York essentially fails to exercise "Police Power" against its agents even if there is a victim to their illegal acts, but such power is exercised over non-State agents even if there is no victim, and the State defends and pay civil damages against its agents.

25. On information and belief, the acts of the said actors were all willful and concerted, and malicious and knowing in



furtherance of some purpose, personal to one or more of the actors herein.

26. By reason of the aforesaid conspiracy the defendants herein have assembled things about plaintiff and/or distributed information about him, all against his wish, because of acts of government agents without authority of law, which plaintiff requires as personal to him, and for such future collection of things about plaintiff, he requires the same to be put in his possession promptly after any such criminal charge fails, without request, litigation or identification.

27. For this cause of action the question is raised

WHETHER THE GATHERING, RETENTION AND DISTRIBUTION OF INFORMATION ABOUT A PERSON BY A GOVERNMENT AGENCY THRU THE ACTION WITHOUT AUTHORITY OF LAW OF GOVERNMENT AGENTS OF THE STATE VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, AND DUE PROCEEDS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN NO CRIMINAL CHARGE PREVAILLES?

WHEREFORE plaintiff demands judgment against said defendants

1. For a permanent injunction against collecting any information about anyone when information collected and/or distributed about a person against which a criminal conviction fails to prevail, has not been put in such persons possession;
2. For cost of suit;
3. Attorney fees; and
4. For other and further relief as to the court may seem justice and proper in the premises.

FOR A SECOND CAUSE OF ACTION AGAINST ALBANY COUNT JUDGE

JOHN J. CLYNE

28. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 1. - 25. ((1.)), (2.), (3.), (4.), (5.), (6.), (7.), (8.), (9.), (10.), (11.), (12.), (13.), (14.), (15.), (16.), (17.), (18.), (19.), (20.), (21.), (22.), (23.), (24.) and (25.)) of this complaint with the same force and effect as if herein set forth anew.

29. By reason of the aforesaid conspiracy in which defendant failed to act without excessive delay, plaintiff, requires any decision required by law in a criminal case, be rendered within the time limitations of a civil case without litigation.

30. For this cause of action the question is raised

WHETHER THE FAILURE OF A MEMBER OF A STATE JUDICIARY TO ACT UPON A CRIMINAL CASE WITHOUT LITIGATION OR WITHIN THE TIME SPAN FOR A CIVIL CASE VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, AND DUE PROCEEDS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN A CRIMINAL CASE DECISION TAKES AROUND 5 MONTHS TO BE ISSUED WITH LITIGATION AND CIVIL CASES ARE REQUIRED TO BE ISSUED WITHIN 2 MONTHS?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permanent injunction against accepting any additional case for consideration when any previous case received for consideration has not been acted within 2 months;

2. For cost of suit;

3. Attorney fees; and

4. For other and further relief as to the court may seem justice and proper in the premises.



FOR A THIRD CAUSE OF ACTION AGAINST DIRECTOR OF ALBANY  
COUNTY PROBATION DEPARTMENT

31. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 28. of this complaint with the same force and effect as if herein set forth anew.

32. By reason of defendant's discreditable office and personnel in the aforesaid conspiracy, plaintiff requires said office to be staffed with creditable people.

33. For this cause of action the question is raised

WHETHER A PROBATION DEPARTMENT WITHIN A STATE THAT IS STAFFED BY PEOPLE WHO DO NOT HOLD THEMSELVES ACCOUNTABLE TO THE LAWS LAWABIDING PEOPLE OBSERVE, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN A CRIMINAL DEFENDANT IS SENT TO PROBATION DEPARTMENT FOR INTERROGATION AND/OR SUPERVISION, THAT IS STAFFED BY KNOWN CRIMINALS WHOSE TRUTHFULNESS CAN NOT BE ANTICIPATED?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permanent injunction against the questioning of a criminal defendant when any member of the questioners staff is relieved of criminal liability because of their position;
2. For cost of suit;
3. Attorney fees; and
4. For other and further relief as to the court may seem justice and proper in the premises.

FOR A FOURTH CAUSE OF ACTION AGAINST DISTRICT ATTORNEY  
OF ALBANY COUNTY

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 28. of this complaint with the same force and effect as if herein set forth anew.

35. By reason of the aforesaid conspiracy, plaintiff requires said defendant not to represent any one, or appear in any case in which a member of a police force is the complaintant in such capacity.

36. For this cause of action the question is raised

WHETHER A THE FAILURE OF A DISTRICT ATTORNEY IN A STATE, TO PROSECUTE STATE AGENTS, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, AND DUE PROCESS OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN CRIMINAL CASES AGAINST NON-STATE AGENTS IS EXCLUSIVE?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permanent injunction against appearing as prosecutor in any case that has a member of a police force as the complaintant acting as such governmental official;

2. For cost of suit;

3. Attorney fees; and

4. For other and further relief as to the court may seem justice and proper in the premises.

FOR A FIFTH CAUSE OF ACTION AGAINST DISTRICT ATTORNEY OF ALBANY COUNTY

37. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 28. of this complaint with the same force and effect as if herein set forth anew.

38. By reason of the aforesaid conspiracy, plaintiff re-



quires said defendant not engineer, urge, seek or accept information about a criminal defendant that is prepared by a probation department.

39. For this cause of action the question is raised

WHETHER A DISTRICT ATTORNEY'S OFFICE IN A STATE THAT ENGINEERS, URGES, SEEKS OR ACCEPTS INFORMATION ABOUT A CRIMINAL DEFENDANT THAT IS PREPARED BY A PROBATION DEPARTMENT, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCEEDINGS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN SUCH INFORMATION DOES NOT HAVE ANYTHING TO DO WITH THE PROSECUTION OF A CRIMINAL DEFENDANT WHO HAS BEEN CONVICTED?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permanent injunction against engineering, urging, seeking or accepting information about a criminal defendant that is prepared by a probation department;
2. For cost of suit;
3. Attorney fees; and
4. For other and further relief as to the court may seem justice and proper in the premises.

FOR A SIXTH CAUSE OF ACTION AGAINST DISTRICT ATTORNEY OF ALBANY COUNTY

40. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 28. of this complaint with the same force and effect as if herein set forth anew.

41. Assistant District Attorney Peter Gerstenzang said during the said trial to the trial Justice, that he did not have information of the plaintiff's innocence.

42. By reason of the aforesaid conspiracy, plaintiff requires said defendant not attempt to present any case without adequate preparation, or with want of fairness or candor, or obstruct the administration of justice.

43. For this cause of action the question is raised

WHETHER A DISTRICT ATTORNEY'S OFFICE IN A STATE THAT ATTEMPS PRESENTATION OF ANY CASE WITHOUT ADEQUATE PREPARATION, OR WITH WANT OF FAIRNESS OR CANDOR, OR OBSTRUCTS THE ADMINISTRATION OF JUSTICE, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCEEDS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN A CASE IS PROSECUTED WITHOUT ANY EVIDENCE PRESENTED OF WRONGDOING OF A CRIMINAL DEFENDANT?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permanent injunction against the attempted presentation of any case without adequate preparation, or with want of fairness, or candor, or obstruction of the administration of justice;

2. For cost of suit;

3. Attorney fees; and

4. For other and further relief as to the court may seem justice and proper in the premises.

FOR A SEVENTH CAUSE OF ACTION AGAINST THE SUPERINTENDENT OF THE NEW YORK STATE POLICE

44. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 28. of this complaint with the same force and effect as if herein set forth anew.

45. By reason of the aforesaid conspiracy, plaintiff re-



quires said defendant not permit any member of the New York State Police to arrest any person unless taken directly to a magistrate without delay, for arraignment.

46. For this cause of action the question is raised

WHETHER THE FAILURE OF POLICE TO IMMEDIATELY TAKE AN ARRESTED PERSON TO A MAGISTRATE FOR ARRAIGNMENT, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCEEDS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN THE LONGER AN ARRESTEE IS IN CUSTODY OF POLICE THE MORE PROHIBITED CONDUCT IS ENGAGED IN BY POLICE?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permanent injunction against any member of the New York State Police to arrest any person when the arrestee will not be taken immediately to a magistrate for arraignment;
2. For cost of suit;
3. Attorney fees; and
4. For other and further relief as to the court may seem justice and proper in the premises.

FOR A EIGHTH CAUSE OF ACTION AGAINST THE SUPERINTENDENT OF THE NEW YORK STATE POLICE

47. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 28. of this complaint with the same force and effect as if herein set forth anew.

48. By reason of the aforesaid conspiracy, plaintiff requires said defendant not permit members of the New York State Police to file any charge against a person who any such member had asked any question or asked to establish innocence of

wrongdoing.

49. For this cause of action the question is raised

WHETHER A CHARGE BY POLICE THAT FOLLOWS THE REFUSAL TO ANSWER A QUESTION OR TO ESTABLISH INNOCENCE OF WRONG DOING, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN POLICE ARE OBLIGED TO PROVE WRONG-DOING?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permanent injunction against any member of the New York State Police to make any charge against a person that any member had asked a question or to establish innocence;

2. For cost of suit;

3. Attorney fees; and

4. For other and further relief as to the court may seem justice and proper in the premises.

FOR A NINTH CAUSE OF ACTION AGAINST THE SUPERINTENDENT OF THE NEW YORK STATE POLICE

50. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 28. of this complaint with the same force and effect as if herein set forth anew.

51. By reason of the aforesaid conspiracy, plaintiff requires said defendant not permit members of the New York State Police to arrest or charge any person without a showing of injury.

52. For this cause of action the question is raised

WHETHER THE ARREST OR CHARGE OF WHICH THERE IS



NO SHOWING OF ANY VICTIM BY POLICE, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN POLICE ARE NOT ARRESTED OR CHARGED AFTER ONE CAUSES INJURY TO SOMEONE AFTER VIOLATION OF ONE'S FEDERAL CONSTITUTIONAL RIGHT?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permanent injunction against any member of the New York State Police to make any arrest or charge against any person when injury can not be shown;
2. For cost of suit;
3. Attorney fees; and
4. For other and further relief as to the court may seem justice and proper in the premises.

FOR A TENTH CAUSE OF ACTION AGAINST THE SUPERINTENDENT OF THE NEW YORK STATE POLICE

53. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 28. of this complaint with the same force and effect as if herein set forth anew.

54. By reason of the aforesaid conspiracy, plaintiff requires said defendant not permit members of the New York State Police who have had civil damages because of prohibited conduct, paid by the State, and had not suffered a criminal conviction, to supervise other members or arrest or charge any person or make a search as a State agent.

55. For this cause of action the question is raised

WHETHER THE SUPERVISION OF POLICE OR ARREST OR SEARCH OR CHARGE BY A STATE AGENT, VIOLATES THE PER-

SONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN SUCH AN AGENT SUFFERS A CIVIL AND NOT A CRIMINAL JUDGMENT AFTER CAUSING INJURY THRU PROHIBITED CONDUCT THRU PREUNDERSTANDING?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permanent injunction against any member of the New York State Police who have had civil damages because of prohibited conduct, paid by the State, and not suffered a criminal conviction, to supervise other members or arrest or charge any person or make a search as a State agent;

2. For cost of suit;

3. Attorney fees; and

4. For other and further relief as to the court may seem justice and proper in the premises.

FOR A ELEVENTH CAUSE OF ACTION AGAINST THE SUPERINTENDENT OF THE NEW YORK STATE POLICE

56. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 28. of this complaint with the same force and effect as if herein set forth anew.

57. By reason of the aforesaid conspiracy, plaintiff requires said defendant not permit members of the New York State Police to make any search of anything without making advance arraignments for its safety and protection without any possible attachment of a lein until turned over to its owner.

58. For this cause of action the question is raised

WHETHER THE SEARCH BY A STATE AGENT OF ANYTHING



WITHOUT PROTECTING ITS SAFETY WITHOUT POSSIBLE LIEN UNTIL TURNED OVER TO ITS OWNER, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN A SEARCH IS EITHER ILLEGAL AND/OR EVIDENCE OF A CRIMINAL NATURE?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permanent injunction against any member of the New York State Police to make any search of anything without making advance arraignment for its safety without any possible attachment of a lien until turned over to its owner;
2. For cost of suit;
3. Attorney fees; and
4. For other and further relief as to the court may seem justice and proper in the premises.

FOR A TWELFTH CAUSE OF ACTION AGAINST THE SUPERINTENDENT OF THE NEW YORK STATE POLICE

59. Plaintiff repeats and realleges each and every allegation contained in paragraphs numbered 28. of this complaint with the same force and effect as if herein set forth anew.

60. The said charge of Veh. & T. Law Sec. 1102 for failure to obey an order against plaintiff was by Uniform Traffic Ticket which failed to show what order.

61. By reason of the aforesaid conspiracy, plaintiff requires said defendant not permit members of the New York State Police to make any charge by Uniform Traffic Ticket when there is an arrest or search connected with such charge.

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(COMPLAINT) & (MOTION TO DISMISS)

62. For this cause of action the question is raised

WHETHER A CHARGE OF A STATE AGENT BY A UNIFORM TRAFFIC TICKET THAT IS CONNECTED WITH AN ARREST AND /OR SEARCH BY A STATE AGENT, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN SUCH A TICKET CAN NOT BE EXPECTED TO SUPPLY INFORMATION THAT IS NEEDED TO THE PERSON CHARGED TO KNOW WHAT KIND OF A CHARGE IS TO BE CLAIMED BY A STATE AGENT AT TRIAL AFTER CONSIDERATION OF EVENTS?

WHEREFORE plaintiff demands judgment against said defendant

1. For a permanent injunction against any member of the New York State Police making any charge by Uniform Traffic Ticket when there was any arrest or search by a State agent connected with it or event.

2. For cost of suit;

3. Attorney fees; and

4. For other and further relief as to the court may seem justice and proper in the premises.

verification

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(NOTICE OF MOTION TO DISMISS)

PLEASE TAKE NOTICE that upon the annexed affidavit of Terence L. Kindlon, sworn to the 5th day of August, 1975 and upon the summons and petition and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a Term thereof to be held at the United States Post Office and Courthouse Building, Albany, New York on the 15th day of September, 1975 at 9:30 A.M., in the forenoon of



that day, or as soon thereafter as counsel can be heard for a judgement dismissing the pro se petition of plaintiff upon the grounds that the issues raised by plaintiffs complaint have already been decided against the plaintiff by courts of competent jurisdiction and, accordingly are barred by res judicata and/or collateral estoppel and, further, that plaintiff failed to state a claim upon which relief can be granted together with such other and further relief as to the Court may seem just and proper.

-----

## (AFFIDAVIT OF MOTION TO DISMISS)

TERENCE L. KINDLON, as an Assistant County Attorney for the County of Albany, pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure, moves the Court for an Order dismissing the pro se complaint herein as to the District Attorney of Albany County, Director of the Albany County Probation Department, the Sheriff of Albany County, and Albany County Judge John J. Clyne, on the ground that the complaint fails to state a claim upon which relief can be granted, for the reasons following:

1. All allegations specified in the claimant's complaint have been decided against the claimant or mooted in prior actions and are thus barred by res judicata and/or collateral estoppel.
2. The prior cases of Schanbarger v. McNulty (Civil Action No. 75-CV-93, United States District Court, Northern District

of New York, Appeal Pending No. T-4814 in the Second Circuit Court of Appeals of the United States) and Schanbarger v. Clyne (Court No. 25519 New York State Supreme Court, Appellate Division, Third Department) decide every question of fact or law raised by the claimant. The complaint should, therefore, be dismissed for failure to state a claim upon which relief can be granted.

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## (MOTION TO DISMISS APPEARANCE)

The defendant, Superintendent of The New York State Police, hereby appears in this action by his attorney, the Honorable Louis J. Lefkowitz, Attorney General of the State of New York, and moves this honorable Court as follows:

1. To dismiss the action against him because this honorable Court lacks jurisdiction over the person of the defendant; and,
2. To dismiss the action against him because this honorable Court lacks jurisdiction over the subject matter; and,
3. To dismiss the action as against him for failure to state a claim upon which relief can be granted; and,
4. To dismiss the action against him on the grounds that there is no diversity of citizenship between the plaintiff and the defendant; and,
5. To dismiss the action against him on the grounds that there are other actions pending in the Court of Claims of the State of New York, in the Supreme Court of the State of New York County of Washington, and the Supreme Court of the State of New York County of Albany, all arising out of the same facts as alleged in the complaint herein;



6. Or, in the alternative, for an Order extending the defendant's time to answer or otherwise move with reference to the complaint herein until such time as all the aforementioned proceedings in various State Courts are finally disposed of.

That attached hereto is the affidavit of Robert M. Auld, Assistant Attorney General of the State of New York which more clearly states the reasons for the relief sought in the aforementioned paragraphs.

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(NOTICE OF MOTION TO DISMISS)

PLEASE TAKE NOTICE that the undersigned will bring the above motion on for hearing before this Court at the United States Courthouse, Albany, New York, on the 15th day of September, 1975, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

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(AFFIDAVIT FOR MOTION TO DISMISS)

ROBERT M. AULD, being duly sworn, deposes and says:

I am an Assistant Attorney General of the State of New York, associated with Honorable Louis J. Lefkowitz, Attorney General of the State of New York, the attorney for the above named defendant, Superintendent of The New York State Police, and am fully familiar with all the facts and circumstances hereinafter set forth, and am submitting this affidavit in support of the motion of the defendant aforementioned to dismiss the above entitled action on the grounds set forth in

the Notice of Motion herein, or, in the alternative, for a stay of all further proceedings pending the final disposition of the other actions pending by the above named plaintiff based upon the same facts as are alleged in the complaint herein.

That on May 9, 1974 the plaintiff was involved in an incident involving his Volkswagen Camper which was parked according to his allegation in the parking lot of Alkens Men's Hairstylists adjacent to Central Avenue in the Town of Colonie, County of Albany, State of New York. That he was approached by two New York State Troopers in the late evening hours, and was asked certain questions to which he refused to make an answer and as a result of the particular circumstances, location of the plaintiff and his Volkswagen, hour of the night, and general conditions of the scene, the State Troopers arrested the defendant in the early hours of May 10, 1975 and charged him with certain violations of the Penal Law and the Vehicle and Traffic Law of the State of New York.

That eventually after having been found guilty in the Police Court in the Town of Colonie, Judge John J. Clyne wrote a decision wherein he dismissed the charges against the defendant in those actions, the plaintiff in this action.

That on July 15, 1974 a "Notice of Intention To File Claim" was received in the office of the Department of Law of the State of New York alleging that the claimant (Donald Schanbarger, the plaintiff herein) was claiming against the State



of New York for damages as a result of the activities of two State Troopers on May 9 and 10, 1974 at Alkens Men's Hairstylists.

That on March 5, 1975, Donald Schanbarger caused a motion for disclosure to be brought on in the Court of Claims relative to his aforementioned claim against the State of New York.

That said motion for disclosure (M-17207) came on to be heard before the Honorable Milton Alpert, Judge of the Court of Claims on April 8, 1975 wherein Judge Alpert denied the motion for disclosure as being premature but granted Donald Schanbarger permission to renew his motion after he filed his formal notice of claim against the State of New York; Donald Schanbarger did on June 24, 1975, which has received Claim No. 59399.

That on March 6, 1975, the plaintiff herein, Donald Schanbarger, commenced an action in the Supreme Court of Albany County (Index No. 9370-74) against Edward Dott's Garage, Inc. as the named defendant wherein he sought replevin of his Volkswagen and certain personal property incident to the Volkswagen as well as money damages and equitable relief that the defendant, Edward Dott's Garage, deliver all of said chattels to the plaintiff at his home in Salem, New York.

That pursuant to statutes of the State of New York, the Attorney General of the State of New York represents and has undertaken the defense of said action by Donald Schanbarger against Edward Dott's Garage, Inc. which action has passed

through the initial phases of answer and discovery and has been assigned a calendar number in the Albany County Supreme Court.

That on May 6, 1974, Donald Schanbarger commenced an action in the New York State Supreme Court, Washington County, against Carl R. Baker, T. F. Hudson, R. D. Dilton, Philip B. Phelan and William E. Kirwin.

That action in the Supreme Court of Washington County against the four named individual New York State Troopers and the then Superintendent of New York State Police, William Kirwin, also alleged that the plaintiff Donald Schanbarger has been damaged as a result of a conspiracy by all of them as a result of certain activities which took place in the parking lot of Alk ns Men's Hairstylists on the evening of May 9, and early morning of May 10, 1974.

That the aforesaid action in the Supreme Court of the State of New York, Washington County has progressed to the point where there has been pretrial motions, and answer on behalf of the defendants and probable trial in the near future.

That on July 13, 1975, the instant action was commenced by Donald Schanbarger as plaintiff against the Superintendent of The New York State Police as well as the other defendants wherein the plaintiff complains again of the activities which took place on the evening of May 9, 1974 and the early morning of May 10, 1974.

That a reading of the complaint in the instant action in



icates that the plaintiff contends that there are twelve separate causes of action in his complaint.

That as to the alleged First Cause of Action against the Superintendent of The New York State Police, and other defendants, the plaintiff poses a question in paragraph 27 as to whether the gathering, retention and distribution of information violates his constitutional rights as alleged in said paragraph.

That in respect to this First Cause of Action, it is the position of the defendant, the Superintendent of The New York State Police, that since the allegation of jurisdiction in paragraph "First" of the complaint is for a violation of the civil rights of the plaintiff that the Superintendent of the New York State Police is not a member of the Federal judiciary as alleged therein and that, therefore, said cause of action should be dismissed as against the Superintendent of The New York State Police.

That in respect to the alleged Second, Third, Fourth, Fifth and Sixth Causes of Action, the plaintiff herein makes no complaint against the Superintendent of The New York State Police but rather against other named defendants and, therefore, no response is made to said alleged causes of action save a general denial to all the allegations.

That in respect to the alleged Seventh Cause of Action, wherein the plaintiff contends that through conspiracy of many he was not given a speedy arraignment, a review of the record

herein and in his claim in the Court of Claims action aforementioned that the plaintiff herein was, in fact, brought before a magistrate in the morning of May 10, 1974 within hours of his arrest.

That in respect to the alleged Eighth Cause of Action against the Superintendent of The New York State Police wherein the plaintiff alleges that his arrest for failure to identify himself through conspiracy of many violated his constitutional rights.

That the plaintiff's personal constitutional rights were not violated when he was arrested for failing to identify himself.

That in respect to the alleged Ninth Cause of Action against the Superintendent of The New York State Police wherein the plaintiff alleges that there is a conspiracy by the defendant and others whenever there is no showing of any victim (victimless crimes) and that this violates his constitutional rights, it is submitted that on its face, this does not state a cause of action and in addition that the plaintiff in the first fifty-two paragraphs of his complaint has failed to make a showing of any conspiracy which involves the defendant, Superintendent of The New York State Police.

That in respect to the alleged Tenth Cause of Action against the Superintendent of the New York State Police, that your deponent does not understand exactly what the plaintiff herein claims other than that his constitutional rights are



violated through a conspiracy when a State agent suffers a civil judgment through preunderstanding and that no supervisory member of State Government who has a civil judgment against him should be allowed to supervise other persons. Your deponent does not believe that the above states a cause of action.

That in respect to the alleged Eleventh Cause of Action against the Superintendent of The New York State Police wherein it is claimed that there has been an unconstitutional search by a State agent through conspiracy without protecting the safety of the object searched, it is submitted that, in fact, when the New York State Police turned the Volkswagen and personal property over to Edward Dott's Garage, Inc., they, in fact, did guarantee the safety of such Volkswagen and personal property.

That in respect to the alleged Twelfth Cause of Action against the Superintendent of The New York State Police wherein the plaintiff claims his constitutional rights were violated when he was issued a uniform traffic ticket, it is submitted that the information which the plaintiff seeks to have added to the ticket could be obtained through the simple expedience of a demand for a bill of particulars which is covered in the Criminal Procedure Law of the State of New York.

WHEREFORE, the defendant the Superintendent of The New York State Police demands judgment dismissing the complaint in its entirety for the reason that the plaintiff has failed to show

jurisdiction over the defendant, and that as to each of the causes of action alleged against the defendant, Superintendent of The New York State Police, the plaintiff has already caused another action in the State Court and that this action as to the defendant, Superintendent of The New York State Police is a duplicate of said prior lawsuits, and for such other and further relief as to the Court may seem just and proper in the premises.

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(NOTICE OF MOTION TO DENY MOTION TO DISMISS)

PLEASE TAKE NOTICE that on the 15th day of September, 1975, at 10 o'clock in the forenoon, at the U.S. Courthouse, Albany, New York, or as soon thereafter as Donald Schanbarger can be heard upon the papers of this case, he will move that any and all motions made to dismiss or delay the proceedings of the Complaint be denied in every respect, or that plaintiff's time to appeal be extended.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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DONALD SCHANBARGER,

Plaintiff,

-against-

75-CV-336

SUPERINTENDENT OF THE NEW YORK STATE  
POLICE, DISTRICT ATTORNEY OF ALBANY  
COUNTY, DIRECTOR OF ALBANY COUNTY  
PROBATION DEPARTMENT, SHERIFF OF AL-  
BANY COUNTY AND ALBANY COUNTY JUDGE  
JOHN J. CLYNE,

Defendants.

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APPEARANCE:

OF COUNSEL:

DONALD SCHANBARGER, Pro Se  
Ferguson Lane  
Salem, New York 12865

ROBERT ROCHE  
Albany County Attorney  
Albany County Court House  
Albany, New York 12207

TERENCE L. KINDLON

LOUIS J. LEFKOWITZ  
NYS ATTORNEY GENERAL  
Attorney for Defendant  
Superintendent of New York  
State Police  
New York State Department of Law  
Capitol  
Albany, New York 12224

ROBERT M. AULD  
Assistant Attorney General

JAMES T. FOLEY, D.J.

MEMORANDUM-DECISION and Order

The plaintiff pro se files a complaint with twelve causes of action, each cause of action specifies the officials against whom the relief of injunctive relief is sought. The claims are all based upon alleged violations of the Personal Rights Clause of the Tenth Amendment, and the Equal Protec-

tion and Due Process Clauses of the Fourteenth Amendment, Jurisdiction is asserted under these Amendments and Title 42 USC Sec. 1983, and 28 U.S.C. Sec. Sec. 1343(3) and (4). The incidents relied upon which the plaintiff seeks injunctive relief only against the named defendants revolves around his arrest and prosecution when he failed to display a registration for a Volkswagen Camper on May 9, 1974, when it is alleged he was arrested by two people plaintiff describes as "dressed as N.Y.S. Troopers."

The plaintiff is no stranger to this court. By memorandum-decision and order dated May 5, 1975, I dismissed a civil rights complaint of this plaintiff alleging violation of constitutional rights while he was confined at the Albany County Jail assumedly as a result of this same arrest. This action was Schanbarger v. John J. McNulty, Jr., Sheriff, 75-CV-93, and is on appeal to the Court of Appeals, Second Circuit. That decision noted that plaintiff was a dairy farmer in Washington County, and from the complaint in this action and other details disclosed in the submission on the motions to dismiss, it seems as though the plaintiff has given up farming to devote a major part of his time to litigating.

The Attorney General in behalf of the Superintendent of New York State Police, moves for dismissal of the complaint upon five stated grounds, with the alternative request that if denied, the time to answer be extended. The Albany County Attorney moves to dismiss the claims asserted against the other



Albany County officials named as defendants on the ground the claims of the plaintiff in this action are barred by res judicata and or collateral estoppel, and that plaintiff fails to state claims upon which relief can be granted. No details are furnished for the res judicata and collateral estoppel reasons. It should be noted that in a false imprisonment case, *Schanbarger v. Kellogg*, N.Y. Ct. Appeals, review was denied by the United States Supreme Court on January 3, 1975. 44 U.S. Law Week 3261, and see also 44 U.S. Law Week 3132 for docketing of case. Further, the affidavit of the Assistant Attorney General states that plaintiff is suing the State of New York in the New York Court of Claims; in the Supreme Court of Albany County, Edward Dott's Garage for replevin of the Volkswagen Camper involved in the incidents; and also is suing four individual State Troopers and the Superintendent of State Police in Washington County, Supreme Court of New York.

A reading of the twelve causes of action leaves no doubt in my mind that the plaintiff has not alleged viable claims to indicate in any degree that he was deprived of or had his constitutional rights violated. *Adickes v. Kress & Co.*, 398 U.S. 144 (1970). Chief Judge Kaufman recently in *Fine v. The City of New York, et al.*, \_\_\_\_\_ F.2d \_\_\_\_\_, 12/31/75, Dkt. No. 75-7021, dismissed several of the principles to be applied here. Complaints of this kind are plainly insufficient unless they contain some allegations of facts indicating a deprivation of civil rights. *Powell v. Jarvis*, 460 F.2d 551, 553 (2d Cir.

1970). Settled principles of judicial immunity were not abrogated by enactment of 42 U.S.C. Sec. 1983, *Pierson v. Ray*, 386 U.S. 547 (1967), and the Court of Appeals, Second Circuit, repeatedly has given its approval to the official acts of a quasi-judicial immunity to the official acts of public prosecutors performed within their authority. *Decey v. New York County Lawyers' Assn.*, 423 F.2d 188, 192 (2d Cir. 1969), cert. den. 398 U.S. 929 (1970). Several defendants at least were not personally involved. *Johnson v. Glick*, 481 F.2d 1028 (2d Cr. 1973).

The United States Supreme Court handed down very recently a ruling that has important application here. *Rizzo v. Good-*  
*e.*, \_\_\_\_ U.S. \_\_\_\_, decided 1/21/76, 44 U.S. Law Week 4095. There, it was noted that, as here, the police officers were not named as defendants and therefore there was serious doubt whether there was an Article III case or controversy between the parties for the federal courts. It was also stated that where the authority of a state official is attacked, federal courts must be constantly mindful of the "special delicacy of the adjustment to be preserved between the federal equitable power and state administration of its own law." It was also emphasized that principles of federalism have applicability where injunction is sought not only against the judicial branch of state government, but also against those in charge of an executive branch of state or local government. See *Kugler v. Helfant*, 421 U.S. 117 (1975); *Huffman v. Pursue, Ltd.*,



(MEMORANDUM-DECISION & Order) & (NOTICE OF APPEAL) App. 33  
420 U.S. (1975).

The separate motions to dismiss are granted for failure to state claims against any of the named defendants upon which relief can be granted. The Complaint is dismissed in its entirety.

It is so Ordered.

Dated: February 11, 1976

Albany, New York

/s/ James T. Foley  
UNITED STATES DISTRICT JUDGE

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(NOTICE OF APPEAL)

Notice is hereby given that Donald Schanbarger, plaintiff above named, hereby appeals to the United States Court of Appeals for the Second Circuit from an order and judgment dismissing the complaint in its entirety, entered in this action on February 12, 1976.

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK )  
 ) SS.:  
WASHINGTON COUNTY )

GEORGE FERGUSON, being duly sworn, deposes and says;  
I am over 21 years of age and not a party to the cause of  
action(s) herein.

On the            day of            , 1976, he served the within  
papers upon LOUIS J. LEFKOWITZ and ROBERT P. ROCHE attorney(s)  
for the defendants herein by enclosing a true copy(s) there-  
of in a securely sealed postpaid wrapper, addressed as follows:

Hon. Louis J. Lefkowitz  
The Capitol  
Albany

ROBERT P. ROCHE, Esq.  
Albany County Attorney  
Albany County Court House  
Albany, New York 12207

New York 12224

by depositing the same in the post office box regularly main-  
tained by the United States Government at            ,  
New York.

-----  
GEORGE FERGUSON

Sworn to before me this            day  
of            , 1976

-----  
Notary Public

Due and personal service  
of one copy of the with-  
in APPENDIX is admitted  
this 20th day of April,  
1976.

*John M. Fuld*  
-----  
Assistant Attorney General  
45 Sp + Low  
100 AM Hudson Falls, NY

Due and personal service  
of one copy of the with-  
in APPENDIX is admitted  
this 20th day of April,  
1976.

*John M. Fuld*  
-----  
Assistant County Clerk  
Albany  
4/20/76



DEFENDANT IS SENT TO PROBATION DEPARTMENT FOR INTERROGATION AND/OR SUPERVISION, THAT IS STAFFED BY KNOWN CRIMINALS WHOSE TRUTHFULNESS CAN NOT BE ANTICIPATED?

- (4) WHETHER A THE FAILURE OF A DISTRICT ATTORNEY IN A STATE, TO PROSECUTE STATE AGENTS, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, AND DUE PROCESS OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN CRIMINAL CASES AGAINST NON-STATE AGENTS IS EXCLUSIVE?
- (5) WHETHER A DISTRICT ATTORNEY'S OFFICE IN A STATE THAT ENGINEERS, URGES, SEEKS OR ACCEPTS INFORMATION ABOUT A CRIMINAL DEFENDANT THAT IS PREPARED BY A PROBATION DEPARTMENT, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN SUCH INFORMATION DOES NOT HAVE ANYTHING TO DO WITH THE PROSECUTION OF A CRIMINAL DEFENDANT WHO HAS BEEN CONVICTED?
- (6) WHETHER A DISTRICT ATTORNEY'S OFFICE IN A STATE THAT ATTEMPS PRESENTATION OF ANY CASE WITHOUT ADEQUATE PREPARATION, OR WITH WANT OF FAIRNESS OR CANDOR, OR OBSTRUCTS THE ADMINISTRATION OF JUSTICE, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN A CASE IS PROSECUTED WITHOUT ANY EVIDENCE PRESENTED OF WRONGDOING OF A CRIMINAL DEFENDANT?
- (7) WHETHER THE THE FAILURE OF POLICE TO IMMEDIATELY TAKE AN ARRESTED PERSON TO A MAGISTRATE FOR ARRAIGNMENT, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN THE LONGER AN ASSESTEE IS IN CUSTODY OF POLICE THE MORE PROHIBITED CONDUCT IS ENGAGED IN BY POLICE?
- (8) WHETHER A CHARGE BY POLICE THAT FOLLOWS THE REFUSAL TO ANSWER A QUESTION OR TO ESTABLISH INNOCENCE OF WRONG DOING, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION

## ISSUES PRESENTED

TION, PROHIBITED STATE CONDUCT AND DUE PROCEEDS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN POLICE ARE OBLIGED TO PROVE WRONG-DOING?

- (9) WHETHER THE ARREST OR CHARGE OF WHICH THERE IS NO SHOWING OF ANY VICTIM BY POLICE, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN POLICE ARE NOT ARRESTED OR CHARGED AFTER ONE CAUSES INJURY TO SOMEONE AFTER VIOLATION OF ONE'S FEDERAL CONSTITUTIONAL RIGHT?
- (10) WHETHER THE SUPERVISION OF POLICE OR ARREST OR SEARCH OR CHARGE BY A STATE AGENT, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN SUCH AN AGENT SUFFERS A CIVIL AND NOT A CRIMINAL JUDGMENT AFTER CAUSING INJURY THRU PROHIBITED CONDUCT THRU PREUNDERSTANDING?
- (11) WHETHER THE SEARCH BY A STATE AGENT OF ANYTHING WITHOUT PROTECTING ITS SAFETY WITHOUT POSSIBLE LIEN UNTIL TURNED OVER TO ITS OWNER, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN A SEARCH IS EITHER ILLEGAL AND/OR EVIDENCE OF A CRIMINAL NATURE?
- (12) WHETHER A CHARGE OF A STATE AGENT BY A UNIFORM TRAFFIC TICKET THAT IS CONNECTED WITH AN ARREST AND/OR SEARCH BY A STATE AGENT, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT AND DUE PROCESS OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN SUCH A TICKET CAN NOT BE EXPECTED TO SUPPLY INFORMATION THAT IS NEEDED TO THE PERSON CHARGED TO KNOW WHAT KIND OF A CHARGE IS TO BE CLAIMED BY A STATE AGENT AT TRIAL AFTER CONSIDERATION OF EVENTS?



## Statement Of The Case

This case is for injunctions for alleged violations of 42 U.S.C. Sec. 1983 (App. 1.). Before answer the defendants moved for dismissal (App. 18-28) of the Complaint (App. 1-18) with 12 causes of action, which was so done (App. 29-33) over the objection (App. 28) of the plaintiff.

The plaintiff, for failure to supply a registration for a V.W. Camper he was repairing in a parking area on demand of State Troopers resulted in his arrest and search of the Camper with things removed from it by State Police and still held by the State Police (App 1). He was held around two hours by police before arraignment and then charged with failure to obey an order under a Uniform Traffic Ticket that did not say what order (App. 17), attempt to commit a crime, and possession of a fire arm which caused him to be put in the ALBANY COUNTY SHERIFF'S JAIL (App. 2) that would not supply him with law books to know the substance of the charges or what timely motions to make. Members of the SHERIFF'S office and the State Police took pictures and finger prints of him (App. 2). The ALBANY COUNTY PROBATION DEPARTMENT has compiled a dossier about him (App. 2). He was convicted which resulted in a suspended sentence and one year probation that result in a 90 day jail sentence (App. 3) thru the prosecutions of the ALBANY COUNTY DISTRICT ATTORNEY'S Office (App. 2) who prosecute people for police but not police for non-police (App. 5). After being sued to act on the appeal, Judge Clyne reversed the conviction.

6 Statement Of The Case

tion and dismissed the charges against plaintiff (App. 4). His V.W. Camper was removed from the parking area at the direction of the State Police by a garage who now keeps it under a claimed lien for payment ineffect for keeping it from him (App. 4-5). The ALBANY COUNTY PROBATION DEPARTMENT that is staffed by people who use their position to obstruct government administration and deny such conduct (App. 3), gathers information about criminal defendants for use of the ALBANY COUNTY DISTRICT ATTORNEY'S OFFICE (App. 5). The State of N.Y. does not exercise "POLICE POWER" over its agents and defends and pays civil damages against them (App. 6). The actors conduct against the plaintiff were the results of a conspiracy against him (App. 5-6). An Ass. D.A. said during the trial of plaintiff, said he did not have information of his innocence (App. 11).

Because of the aforesaid conspiracy against the plaintiff: The Defendants have assembled things of or about plaintiff that he requires the return to him (App. 7); JUDGE CLYNE acted with excessive dely, that he requires him to act without litigation (App. 8); he requires the ALBANY COUNTY PROBATION not be staffed with discreditable personnal (App. 9); He requires the ALBANY COUNTY DISTRICT ATTORNEY not, appear in a case by complaint of police (App. 10), receive information from PROBATION DEPT.(App. 11), present a case without adequate prepartion and candor (App. 12); He requires the SUPERINTENDENT OF THE N.Y. STATE POLICE not permit his members to make



Statement Of The Case & POINT 1 7

file any charge against any person that any member had asked any question or asked to established innocence of wrongdoing (App. 13), to arrest or charge any person without a showing of injury (App. 14), arrest, search, arrest, or supervies other members when the State has paid such member's civil judgment and there was no criminal conviction (App. 1), make any search of anything without advance arraignments for its safety without a posible attachment of a lien (App. 16), and a charge by UNIFORM TRAFFIC TICKET when there is arrest or search connected with such charge (App. 17).

In 1968 the plaintiff had troble with State Police, with the same threshold issue that police must obey the law, for which there has yet to be any cash recovery (app. 6).

POINT 1.

THE COMPLAINT S H O W S RECOGNIZABLE  
VIOLATIONS OF THE FEDERAL CONSTITUTION  
BY THOES GIVEN THE SITUATION OF FRANCHIS-  
ED CRIMINALS BY THE STATE.

This case need not show exhausted State remedies (CARTER v STRANTON, 405 US 669), is one of others for the exersise of paper remidies thru the expected Doctrine of Waste. The standard illegal acts of state and federal agents under the guise of Law & Order are so well known by this Court it would seem little use to go over them at length. The questions of the causes clearly show the objections of the plaintiff by way of the federal Constitution and with judicial notice.

It seems that Peo. v. Marsh, 228 NE 2d 783 bars search of

## 8 POINT 1 & CONCLUSION

anything to do with a traffic ticket in N.Y.S. There is clearly no requirement for a person to have a registration to repair a V.W. Camper in a parking area. If there are cars parked along a road late at night with the head car with its hood up with a few people around it creates no requirement for anyone to supply identification if STATE v TSUKIZANA; Hawaii Sup. Co., 16 Cr. L. 2007 8/30/74 is valid. Possession of a weapon is no presumption that it is unlicensed if JOHONSON v WRIGHT, CA 5, 17 Cr. L. 20003 3/13/75 is valid. Under PEO. v RUTIGLIANO, 261 NY 103 a subject under criminal action need not and should not answer questions. Police must obey the law thru SPANO v N.Y., 360 US 315. Since police, public prosecutors and judges laugh at law (Constitutions) as noted in PEO. v REILLY, 105 NY 2d 845, they as franchised Criminal lack standing to pretend to uphold law. Since a so called peace officer can present his own criminal case under PEO. v SILVERS, 19 NY 2d 707 NYS 2d 107 as a State agent, no one from the D.A.'s office is needed.

The dismissal of the Complaint seems to rest on inmate case law. The names of defendants can be added after discovery.

## C O N C L U S I O N

The appealed Order granting dismissal of the Complaint should be reversed.

SUBMITTED,  
*Donald Schanbarger*  
Donald Schanbarger  
Plaintiff - Appellant  
Salem, New York 12865



## 2 ISSUES PRESENTED

arraignment for its safety without attachment of a lien; and  
(12) Police from using a charge by Uniform Traffic Ticket  
when there is an arrest or search connected with it.  
FOR INJUNCTIONS, and if all of which a district court must  
take judicial notice with or without request?

The framed questions are

(Gen.) Whether a federal court failing to take judicial notice of the United States Constitution without request, violates the personal rights clause of the 8th, 9th, & 10th Amendments and equal protection, prohibited state conduct and due process clauses of the 5th and 14th Amendments of the federal Constitution, when every member of the United States judiciary have agreed to support it as a condition of their office as such a member?

(1) WHETHER THE GATHERING, RETENTION AND DISTRIBUTION OF INFORMATION ABOUT A PERSON BY A GOVERNMENT AGENCY THRU THE ACTION WITHOUT AUTHORITY OF LAW OF GOVERNMENT AGENTS OF THE STATE VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, AND DUE PROCEEDS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN NO CRIMINAL CHARGE PREVAILES?

(2) WHETHER THE FAILURE OF A MEMBER OF A STATE JUDICIARY TO ACT UPON A CRIMINAL CASE WITHOUT LITIGATION OR WITHIN THE TIME SPAN FOR A CIVIL CASE VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, AND DUE PROCEEDS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN A CRIMINAL CASE DECISION TAKES AROUND 5 MONTHS TO BE ISSUED WITH LITIGATION AND CIVIL CASES ARE REQUIRED TO BE ISSUED WITHIN 2 MONTHS?

(3) WHETHER A PROBATION DEPARTMENT WITHIN A STATE THAT IS STAFFED BY PEOPLE WHO DO NOT HOLD THEMSELF ACCOUNTABLE TO THE LAWS LAWABIDING PEOPLE OBSERVE, VIOLATES THE PERSONAL RIGHTS CLAUSE OF THE 10th AMENDMENT AND THE EQUAL PROTECTION, PROHIBITED STATE CONDUCT, AND DUE PROCESS CLAUSES OF THE 14th AMENDMENT OF THE FEDERAL CONSTITUTION, WHEN A CRIMINAL

## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The issues are whether the 10th and/or 14th Amendments of the federal Constitution requires:

- (1) All collection or of distribution of information about a person whos criminal conviction by state agent that fails must be given to such deemed guiltless person;
- (2) Judge from accepting any additional case for consideration when one has failed to be acted by two mos.;
- (3) Probation Dept. from questioning of criminal defendant when its members are held except from Police Power because of their position;
- (4) D. A. from appearing as prosecutor for police when police are not prosecuted;
- (5) D. A. from receiving or engineering information about defendants from Probation Dept.;
- (6) D. A. from attempt to present any case without adequate preparation, fairness or candor or obstruction of justice;
- (7) Police from arresting a person who is not to be taken immediately to a magistrate for arraignment;
- (8) Police from charging one who was asked to establish innocence or asked questions;
- (9) Police from making any charge when injury can not be shown;
- (10) Police from supervise, arrest, charge, or search as a State agent after being spared criminal conviction and civil damages because of prohibited State conduct;
- (11) Police from to make a search of anything without advance



AFFIDAVIT OF SERVICE

STATE OF NEW YORK )  
 ) SS.:  
 WASHINGTON COUNTY )

GEORGE FERGUSON, being duly sworn, deposes and says;  
 I am over 21 years of age and not a party to the cause of  
 action(s) herein.

On the            day of            , 1976, he served the within  
 papers upon LOUIS J. LEFKOWITZ and ROBERT P. ROCHE attorney(s)  
 for the defendants herein by enclosing <sup>two each,</sup> a true copy(s) there-  
 of in a securely sealed postpaid wrapper, addressed as follows:

Hon. Louis J. Lefkowitz  
 The Capitol  
 Albany

ROBERT P. ROCHE, Esq.  
 Albany County Attorney  
 Albany County Court House  
 Albany, New York 12207

New York 12224

by depositing the same in the post office box regularly main-  
 tained by the United States Government at  
 New York.

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 GEORGE FERGUSON

Sworn to before me this            day  
 of            , 1976

-----  
 Notary Public

Due and personal service  
 of two copies of the  
 within BRIEF is admitted  
 this 20th day of April,  
 1976.

*Robert M. Sudd*  
*Assistant County Clerk*  
*100 Ave 04/24/76*  
*Hudson Falls, N.Y.*

Due and personal service  
 of two copies of the  
 within BRIEF is admitted  
 this 20th day of April,  
 1976.

*T. L. Walsh*  
*Notary Public*  
*4/20/76 10:16 AM*  
*Hudson Falls, N.Y.*